her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto." Section 196 of the same code provides, "The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability." A strict construction of these sections results in the proposition that the mother alone would become liable for the childrens' support upon the husband's abandonment, even though no judicial order were made concerning their custody, for she then becomes "entitled" to their custody. It can hardly be imagined, however, that the courts would have construed these loosely drawn sections so as to permit a worthless husband to cast the burden of supporting the children upon an innocent wife. Since the absurd amendment of section 197 in 1913 providing that husband and wife are "equally entitled" to the custody, services and earnings of the children, the right of the wife to recover under the circumstances set forth in the case which is the subject of this note, is clearly taken away, for as the husband has no superior right to their custody under section 197, he has no primary duty to support his children under section 196 of the Civil Code. The amendment was doubtless drawn with the well meaning intention of benefitting the child, but its authors seem to have expended no thought whatever upon its consequences. What, for example, does the provision mean that the father and mother are "equally" entitled to the services of the child? What if each demands different and conflicting services from the child? And how can each equally be entitled to the earnings of the child? To whom is the employer of a minor to pay wages if both the father and the mother demand them? The patriarchal family theory was at least understandable; one can imagine that the matriarchal theory might be workable; but the legal notion of a family where father and mother are in all respects endowed with equal rights is unthinkable.

C. W. H.

PUBLIC SERVICE COMPANIES: DUTY OF WATER COMPANY TO EXTEND ITS MAINS INTO NEW TERRITORY IN A CITY.—The Supreme Court of California, in *Lukrawka v. Spring Valley Water Company*,[1] established a sound judicial precedent, when it compelled the defendant to extend its mains so as to serve a populous section of the Richmond district in San Francisco. The precise question involved appears to have been hitherto unadjudicated.[2]

[1] (Feb. 3, 1915), 49 Cal. Dec. 177, 146 Pac. 640, reversing 15 Cal. App. Dec. 793. See 1 Cal. Law Rev. 283.

[2] See Haugen v. Albina Light and Water Company (1891), 21 Ore. 411, 28 Pac. 244, 14 L. R. A. 424, where the water company was compelled to serve a house abutting on one of its mains.

The United States Supreme Court[3] cleared the way for the decision in the principal case, by holding that the amendment to the California Constitution,[4] which granted to municipalities the right to prescribe the conditions under which public service companies can operate, did not apply to vested rights. The practical bearing of this holding in the present instance is to confirm the right of the Spring Valley Water Company to lay pipes in any street of San Francisco, without further franchise from the municipality. The question before the California court, therefore resolved itself into this: Can a water company be legally compelled to extend its system into new territory in a city in which it enjoys a general franchise?

The predecessor in interest of the defendant water company was organized and chartered for the purpose of supplying the inhabitants of San Francisco with water, and by a provision in the act of incorporation[5] [later embodied in the constitution[6]] was granted the privilege of using all the streets of the municipality for laying its pipes. Arguing from these premises, the court concluded that it was a public or community service which was contemplated by the extension of the franchise; that it was solely the better to carry out this community service that an easement over all the streets of the municipality was granted; that by the acceptance of its franchise the defendant must be held to have undertaken the service of the community of San Francisco, not with any limit as to area, but in its entirety; and therefore that defendant must extend its system of mains to meet the reasonable demands of the growing community.

This duty to serve the entire community is not, however, an absolute one, obligating a water company to supply every inhabitant within the confines of a city, but merely relative, depending upon the reasonableness of the demand for service in each particular case.[7] That the service demanded involves the laying of pipes in new territory, or considerable expenditure of money, does not necessarily control. The question of reasonableness must be decided in the light of all the circumstances of the parties, including among other things, "the duties of the company, the rights of its stockholders, the supply of water which the company may control for distribution, the facilities for making extensions to a locality beyond its present point of service, the rights of existing customers,

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[3] Russell v. Sebastian (1914), 233 U. S. 195, 34 Sup. Ct. Rep. 517, reversing In re Russell (1912), 163 Cal. 668, 126 Pac. 857. See 2 Cal. Law Rev. 417 and 1 Cal. Law Rev. 176.

[4] § 19, art. XI, as amended in 1911.

[5] Stats. Cal. 1858, p. 218.

[6] Amendment of 1885 to § 19, art. XI of the California Constitution, Stats. Cal. 1885, p. 228.

[7] Wyman, Public Service Corporations, vol. 1, § 797.

the wants and necessities of the locality demanding it, and how far the right of the community as a whole may be affected by the demanded extension."

J. C. A.

SERVICE OF SUMMONS BY PUBLICATION: SUFFICIENCY OF AFFIDAVIT.—Section 412 of the California Code of Civil Procedure requires as one of the requisites of jurisdiction to make an order for the publication of summons that it must be made upon a verified complaint on file or by an affidavit from which it appears that a cause of action exists against the defendant in respect to whom the service is to be made. The rule is often stated to the effect that the affidavit must state probative facts from which the court could ultimately conclude that a cause of action exists.[1] It is to be noted that service in this manner is in derogation of common right and the statute should be substantially complied with[2] and strictly pursued.[3] The judge, in issuing the order, acts judicially upon the evidence presented him in the form of an affidavit or verified complaint and can act upon no other evidence.[4]

In *Lima v. Lima*,[5] service was obtained by an order given on an affidavit, which stated that the plaintiff had been by his attorney informed and verily believed that he had a good cause of action "as will fully appear by my complaint now on file herein, to which reference is hereby made." The court held that the fact that the affidavit referred to the complaint did not "measure up to the requirement of the statute that it must be made to appear by the affidavit that a cause of action exists against the defendant in respect to whom service is to be made, for such reference is to an unverified complaint." The decision of the court is undoubtedly correct upon the ground that the affidavit that affiant believed he had a good cause of action was only a conclusion and was therefore insufficient.[6] If, however, the statement of the court that "ultimate facts averred in the affidavit, must equally with the complaint, clearly disclose the statement of a cause of action in favor of the plaintiff", means that the facts must be set forth by positive averment in the affidavit, the rule thus stated

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[1] People v. Mulcahy (1910), 159 Cal. 34, 112 Pac. 853; Columbia Screw Co. v. Warner Lock Co. (1903), 138 Cal. 445, 71 Pac. 498; Ligare v. California Southern R. R. Co. (1888), 76 Cal. 610, 18 Pac. 777; County of Yolo v. Knight (1886), 70 Cal. 431, 11 Pac. 662; Forbes v. Hyde (1866), 31 Cal. 342; Braly v. Seaman (1866), 30 Cal. 610.

[2] Ricketson v. Richardson (1864), 26 Cal. 149; Columbia Screw Co. v. Warner Lock Co. (1903), 138 Cal. 445, 71 Pac. 498.

[3] McMinn v. Whelan (1865), 27 Cal. 300; Forbes v. Hyde (1866), 31 Cal. 342.

[4] Rue v. Quinn (1902), 137 Cal. 651, 66 Pac. 216.

[5] (Nov. 19, 1914), 19 Cal. App. Dec. 642. Rehearing denied Jan. 18, 1915.

[6] County of Yolo v. Knight (1886), 70 Cal. 431, 11 Pac. 662; Forbes v. Hyde (1866), 31 Cal. 342.